

EXHIBIT Q – Part 1

Complete Deposition of Dr. Thomas Hofeller

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Civil Action No. 1:13-CV-00949

DAVID HARRIS; CHRISTINE) D E P O S I T I O N
BOWSER; and SAMUEL LOVE,)
) O F
Plaintiffs;
-v-) THOMAS B. HOFELLER, PH.D.
PATRICK MCCRORY, in his capacity)
as Governor of North Carolina;)
NORTH CAROLINA STATE BOARD OF)
ELECTIONS; and JOSHUA HOWARD, in)
his capacity as Chairman of the)
North Carolina State Board of)
Elections,)
Defendants.)
-----)

APPEARANCES:

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Thomas A. Farr, Esquire, appearing.

N.C. Department of Justice

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Alexander McC. Peters, appearing.

In Attendance: Dalton Oldham

At Raleigh, North Carolina.

Tuesday, May 6, 2014.

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The following deposition of THOMAS B. HOFELLER, PH.D., called as a witness by the Plaintiffs, was taken before Glenda F. Hightower, Certified Verbatim Reporter and Notary Public, at the law offices of Ogletree, Deakins, Nash, Smoak and Stewart, 4208 Six Forks Road, Suite 1100, Raleigh, North Carolina on Tuesday, May 6, 2014 beginning at 9:06 a.m.

S T I P U L A T I O N S

Prior to the taking of the testimony, counsel for the respective parties stipulate and agree as follows:

1. That the deposition shall be taken and used as permitted by the applicable Federal Rules of Civil Procedure.
2. That any objections of any party hereto as to the notice of the taking of the deposition or as to time or place thereof, or as to the competency of the person before whom the same shall be taken, are deemed to have been met.
3. Objections to questions and motions to strike answers need not be made during the taking of this deposition, but may be made for the first time during the progress of the trial of this case, or at any pretrial hearing held before any judge of competent jurisdiction for the purpose of ruling thereon, or at any other hearing of said case at which said deposition might be used, except that an objection as to the form of a question must be made

at the time such question is asked, or objection is waived as to the form of the question.

4. That the witness reserves the right to read and sign the deposition prior to filing.
5. That the original transcript of this deposition shall be mailed Priority Mail Postage to the party taking the deposition for preservation and delivery to the Court.

1 Whereupon,

2 THOMAS B. HOFELLER, PH.D.,

3 Having been first duly sworn, was examined and
4 testified as follows:

5 Direct Examination by Mr. Speas:

6 Q. Would you state your name for the record?

7 A. Thomas Brooks Hofeller.

8 Q. Okay. We've met before, I believe, Dr.
9 Hofeller, at various times.

10 A. Several times.

11 Q. Yes, we have, and thank you for coming
12 today. I want to talk with you a little bit
13 this morning about your expert report filed in
14 this matter.

15 MR. SPEAS: And if we could, let's
16 go ahead and mark it as Exhibit 1. I guess
17 this the first exhibit in this case.

18 MR. FARR: I'm not sure. Michael
19 had the exhibits and --

20 MR. O'HALE: I think it might be up
21 to eight by now.

22 MR. SPEAS: Oh, okay. So, let's --

23 MR. FARR: Can we go off the record
24 for a second?

25 (DISCUSSION OFF RECORD.)

1 (Plaintiffs' Exhibit 8, Marked for
2 Identification.)

3 Q. (Mr. Speas) Dr. Hofeller, Exhibit 8 has
4 been placed in front of you. And I would ask
5 you whether or not you can identify Exhibit 8
6 as the expert report that you have filed in
7 this case, Harris -v- McCrory?

8 A. I can.

9 Q. And is that your report?

10 A. It is.

11 Q. Okay. I want to ask you a few questions
12 about your circumstances that brought you here.
13 You have been retained in this case by whom?

14 A. I've been retained by the law firm.

15 Q. Of Ogletree Deakins?

16 A. Yes.

17 Q. Okay. And when were you retained?

18 A. I can't remember the last date, but I --
19 I really can't remember when I was retained.

20 Q. Okay.

21 A. It's been -- I've been with this case
22 through -- this line of cases through the whole
23 redistricting cycle.

24 Q. You were retained by the Ogletree firm
25 in the State Court redistricting litigation,

1 correct?

2 **A.** Yes.

3 **Q.** And this, of course, is a separate
4 federal lawsuit. Were you separately retained
5 in this suit, or is your work here simply a
6 continuation of your State Court work?

7 **A.** No, I -- as far as I understand, at this
8 point I'm through with the State case, and this
9 is a new case.

10 **Q.** And your expert report is dated January
11 17, 2014, is that correct?

12 **A.** Yes.

13 **Q.** So, you were retained some time prior to
14 January 17th?

15 **A.** Yes.

16 **Q.** Can you estimate how long before January
17?

18 **A.** I imagine it would have been in November
19 or December.

20 **Q.** Okay. And for what purpose were you
21 retained?

22 **A.** I was retained to give expert testimony;
23 and, of course, I expected to give some factual
24 testimony too.

25 **Q.** Okay. And your retainer is for \$295 an

1 hour?

2 A. That is my fee, yes.

3 Q. Okay. And --

4 A. Plus expenses.

5 Q. Right. And how much have you been paid
6 so far?

7 A. I'm not exactly sure, but I think it's
8 been somewhere in the neighborhood of about 16K
9 -- 12 to \$16,000.

10 Q. Okay. And have you been paid for all
11 the services you have provided to this point?

12 A. Except for this deposition, yes.

13 Q. Okay. Now, in preparing Exhibit 8,
14 other than the attorneys at Ogletree, with whom
15 did you confer; or from whom did you receive
16 assistance?

17 A. I wrote this, myself; and made the
18 inquiries, and examinations and analyses,
19 myself.

20 Q. Okay. So, you did not confer with
21 anyone other than the attorneys in preparing
22 this report?

23 A. Not to my recollection, no.

24 Q. All right. And no other person assisted
25 you in preparing this report?

1 A. No.

2 Q. Okay. A little bit of background: I
3 know a lot about your background, but you have
4 a Ph.D. from Claremont Graduate University,
5 correct?

6 A. I do.

7 Q. And I believe you received that in 1970
8 or thereabouts?

9 A. No, that's not correct.

10 Q. Oh, okay. When did you receive that?

11 A. 1980.

12 Q. Okay. And what was your dissertation
13 topic?

14 A. Mississippi redistricting.

15 Q. Okay. Now, since receiving your Ph.D.,
16 have you ever been employed at the University
17 as a faculty member?

18 A. No.

19 Q. Okay. Since receiving your Ph.D., have
20 you been the sole author of any article in any
21 academic journal?

22 A. No.

23 Q. Is it correct that you have been a
24 consultant for the RNC or other Republican
25 organizations continuously since the 1900s --

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1 1990s?

2 MR. FARR: The 1900s might be right.

3 MR. SPEAS: That may be correct.

4 MR. FARR: I'll let Tom answer that.

5 A. No.

6 Q. (Mr. Speas) Would you describe for me
7 the periods during which you have been a
8 consultant for the Republican National
9 Committee?

10 A. You said during the '90s?

11 Q. Yes.

12 A. I'd have to -- I'd have to go back and
13 look at my resume because I'm not sure. I left
14 the employment of the National Republican
15 Congressional Committee after the '90
16 redistricting. And then I was not employed by
17 any committee, and then in 1999, I believe I
18 was employed by the Republican National
19 Committee through 2003.

20 And then I was employed in the Federal
21 Government from 2003 through the beginning of
22 2009; and then, I believe, in May of 2009, I
23 was retained by the Republican National
24 Committee as a consultant.

25 Q. Would it be accurate, Dr. Hofeller, that

1 you have been a consultant with the Republican
2 National Committee for the 1990 redistricting
3 cycle, the 2000 redistricting cycle and the
4 2010 redistricting cycle?

5 **A.** No.

6 **Q.** Okay.

7 **A.** I was -- I was retained for the -- the
8 1990 redistricting cycle by the National
9 Republican Congressional Committee. It's a
10 separate entity.

11 **Q.** Okay.

12 **A.** And then -- well, I'll finish your
13 question -- then the RNC for the subsequent two.

14 **Q.** Okay. Thank you for that clarification.

15 Describe for me the fields in which you believe
16 you are an expert.

17 **A.** I believe I'm an expert in the field of
18 -- well, all fields really pertaining
19 to redistricting, to demographics, to political
20 data analysis, to redistricting; statistical
21 analysis. I don't think there are any others
22 that are really relevant to that.

23 **Q.** Okay. You're presently employed at an
24 organization called Geographic Strategies,
25 correct?

1 A. I'm a partner.

2 Q. Okay. And Mr. Dale Oldham is your
3 partner in that enterprise?

4 A. He is.

5 Q. Okay. And when was Geographic Strategies
6 formed?

7 A. My recollection is it was in May of 2011.

8 Again, I'd have to look at my resume though.

9 Q. Okay. And are there other partners at
10 Geographic Strategies other than you and Mr.
11 Oldham?

12 A. No.

13 Q. And Mr. Oldham is here today?

14 A. He is.

15 Q. Did you confer with Mr. Oldham in
16 advance about your expert report in this case?

17 A. In his capacity as my attorney, we
18 discuss a whole range of redistricting issues
19 almost constantly.

20 Q. Is Mr. Oldham your attorney in this
21 matter along with Mr. Farr?

22 A. I'm retained by Mr. Farr. Dale is my
23 attorney.

24 Q. All right. Dr. Hofeller, in paragraph 17
25 of Exhibit 8, you say you have been asked to

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1 evaluate the "Export" -- I think that must be
2 a typo -- Expert Report submitted by Dr.
3 Stephen Ansolabehere on behalf of the
4 Plaintiffs.

5 **A.** I'm sorry. Could you give me the page
6 number again?

7 MR. FARR: Page 5.

8 **Q.** (Mr. Speas) It's paragraph 17, page 5.

9 **A.** Okay.

10 MR. FARR: And thank you, Eddie, for
11 pronouncing that name. I'm sure I'm not going
12 to be able to do that.

13 MR. SPEAS: And I have tried, and I
14 think I've got it down, but there's some
15 question about that.

16 **A.** The "e" is silent.

17 **Q.** (Mr. Speas) Okay. You were asked to
18 evaluate this expert report, correct?

19 **A.** I was.

20 **Q.** Okay. And which fields of your expertise
21 did you use in evaluating this report, Exhibit
22 8?

23 **A.** Demographics, redistricting, political
24 analysis; statistical analysis.

25 **Q.** Okay. Have you been asked to conduct

1 any other analyses for this case?

2 **A.** Not at this time, no.

3 **Q.** Okay. Do you expect to be asked to
4 conduct other analyses for this case?

5 **A.** Possibly.

6 **Q.** Okay. All right.

7 MR. SPEAS: Now, let me ask the court
8 reporter to mark this as Exhibit 9.

9 (Plaintiffs' Exhibit 9 Marked for
10 Identification.)

11 **Q.** (Mr. Speas) What the court reporter has
12 placed in front of you is Exhibit 9, the Expert
13 Report of Stephen Ansolabehere. Do you
14 recognize that report -- that exhibit?

15 **A.** I do.

16 **Q.** Okay. And that is the report that you
17 analyzed for Mr. Farr?

18 **A.** I did.

19 **Q.** Okay. Now, let me ask you this: this
20 report, Exhibit 9, includes Tables 1 through
21 11, correct?

22 **A.** (Witness peruses document.) Yes.

23 **Q.** Okay. Is there anything -- is any of
24 the data in Tables 1 through 11 inaccurate in
25 your judgement?

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1 A. (Witness peruses document.) Not that I
2 recall, no.

3 Q. Okay. And Exhibit 9 also includes Maps
4 1 through 8. Have you examined those maps?

5 A. (Witness peruses document.) Yes, I did
6 look at them.

7 Q. Okay.

8 A. They're not very clear on this document.

9 Q. Okay. But are those -- do those maps
10 accurately depict what they purport to depict?

11 A. Yes.

12 Q. Okay. Now, in examining Exhibit 9, did
13 you reach any conclusion with respect to the
14 appropriateness of the methodologies that Dr.
15 Ansolabehere used in preparing his report?

16 A. Could you re-word that again? I'm sorry.

17 Q. Okay. Do you disagree with the
18 methodologies that Dr. Ansolabehere used in
19 preparing his report, Exhibit 9?

20 A. I don't disagree with the method he used.
21 I do disagree with their -- their efficacy in
22 terms of his conclusions.

23 Q. Okay. You do not believe that the
24 methodologies he used were not appropriate, do
25 you?

1 A. I think my answer is as I stated before.
2 I think he used -- he used the methodol- -- the
3 methods, actually, correctly for what they are.

4 Q. Your disagreement is with Dr.
5 Ansolabehere's conclusion, correct?

6 A. It is.

7 Q. Okay. All right. Not with his data?

8 A. No.

9 Q. And --

10 A. Well, yes, in the way -- yes. This one
11 -- there's one thing that I would disagree with
12 and --

13 Q. All right.

14 A. -- that's his dependence upon
15 registration data rather than election results,
16 but as he used the -- the registration data, he
17 came out with the number he should come out
18 with using that method.

19 Q. Okay. And the registration data he used
20 was accurate data?

21 A. I -- I will take him at face value on his
22 data.

23 Q. All right. Okay. Now, Dr. Ansolabehere
24 prepared a report in response to your report,
25 is that correct?

1 A. Yes, he did.

2 MR. SPEAS: And I'll ask the court
3 reporter to mark this as Exhibit 10.

4 (Plaintiffs' Exhibit 10 Marked for
5 Identification.)

6 Q. (Mr. Speas) Is Exhibit 10 Dr.

7 Ansolabehere's response to your report?

8 A. (Witness peruses document.) Yes.

9 Q. And have you reviewed that report?

10 A. I have.

11 Q. Okay. And when did you review the
12 report?

13 A. I reviewed it when I received it from the
14 attorneys, and I reviewed it before this
15 deposition.

16 Q. Okay. And have you prepared any
17 documents in response to Exhibit 10?

18 A. I have not.

19 Q. Okay. Did you conduct any analysis of
20 any data as a consequence of reviewing Exhibit
21 10?

22 A. Any analysis of my own, are you asking?

23 Q. Yes.

24 A. No.

25 Q. Okay. And let me ask you if you contend

1 that any of the data used in Exhibit 10 is not
2 accurate?

3 A. I accept the data that he has in his
4 report.

5 Q. And do you believe that any of the
6 methods Dr. Ansolabehere used in preparing
7 Exhibit 10 are not appropriate for the purpose
8 he used them?

9 A. Again, I would not agree that they are
10 appropriate for the purposes of his
11 conclusions. He -- he preformed the analyses.
12 He performed the analyses correctly. I, once
13 again, agree with his conclusions; and I also
14 state that I'm still not agreeing with the fact
15 that he relied heavily on registration figures
16 and not on actual results; although he did use
17 some election results this time.

18 Q. Okay. All right. Are you considering
19 conducting any additional analysis in response
20 to Exhibit 10?

21 A. Not unless asked.

22 Q. All right. Have you been asked?

23 A. No.

24 Q. Okay. Have you recommended to your
25 counsel that any additional analysis be

1 conducted of Exhibit 10?

2 A. No.

3 Q. Now, Dr. Hofeller, let's talk a little
4 bit about North Carolina and your work in North
5 Carolina in 2011. In paragraph 29 of Exhibit 8
6 on page 9, you state that you were, quote,
7 "intensely involved," close quotes, in the
8 redistricting process in North Carolina.

9 Is that correct?

10 A. I'm sorry? What paragraph, please?

11 Q. Paragraph 29, page 9.

12 A. (Witness peruses page.)

13 Q. And in the last sentence, you say you
14 were "intensely involved in the entire process."

15 A. I'm sorry? The paragraph number again?

16 MR. FARR: 29.

17 Q. (Mr. Speas) 29.

18 MR. FARR: It's the last sentence in
19 29, I think.

20 A. Oh, yes. I'm sorry. Yes.

21 Q. (Mr. Speas) Okay. And is that an
22 accurate description of your role in the
23 redistricting process?

24 A. Yes.

25 Q. Okay. Now, I want to talk to you a

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1 little bit about the kinds of involvement you
2 had. Did you draw the Congressional plans?

3 A. I was the person who drew most of the
4 plans, and finalized the plans and kept track
5 of the plans. It was the same role that I
6 explained to you in the last case we were in.
7 My primary thing was to advise, to keep track
8 of the plans, to draft plans; to be the
9 gatekeeper to make sure everything got done.

10 Q. And in the prior case, you described
11 yourself as the principal architect of the
12 Legislative plans. Would you describe yourself
13 as the principal architect of the Congressional
14 plan as well?

15 MR. FARR: Objection.

16 A. I would. I'm sorry.

17 MR. FARR: That's fine.

18 Q. (Mr. Speas) Okay. Now --

19 A. I would amplify that by saying, of
20 course, as was the case in the Legislative map,
21 the decision -- principal decision-makers in
22 the Congressional map as well as the
23 Legislative map were the chairmen of the two
24 committees.

25 Q. Senator Rucho and Representative Lewis?

1 A. That's correct.

2 Q. And you answered to Senator Rucho and
3 Representative Lewis in drawing the
4 Congressional plan, correct?

5 A. I did.

6 Q. Okay. And did you make recommendations
7 to them with regard to the goals that should be
8 achieved by the plan?

9 A. Actually, they pretty clearly stated to
10 me the goals that they wished to achieve by the
11 plan.

12 Q. Okay. And did they state those goals to
13 you in writing?

14 A. Not directly, no.

15 Q. Okay. Did they state those goals to you
16 in an email?

17 A. No.

18 Q. Okay. Did they state those goals to you
19 by conversation?

20 A. Yes.

21 Q. And was Mr. Oldham present at those
22 conversations?

23 A. Not at all times, no.

24 Q. Okay. Was Mr. Farr present at those
25 conversations?

1 A. Not at all times, no.

2 Q. Okay. Did you make any recommendation
3 to Senator Rucho and Representative Lewis with
4 regard the requirements of the Voting Rights
5 Act in drawing the Congressional plan?

6 A. Representative Lewis and Senator Rucho
7 stated to me that the maps should be drawn in
8 such a way as to pass muster under both Section
9 2 and Section 5, and they knew what that
10 entailed.

11 Q. Okay. And what did that entail? What
12 did you understand that entailed?

13 A. With regard to the Congressional plan, it
14 -- that -- that District 1 was a Voting Rights
15 district, and that District 12 was not a Voting
16 Rights district. It was a political district.

17 Q. Okay. And with regard to District 1,
18 did you recommend to them, Senator Rucho and
19 Representative Lewis, that that district had to
20 be drawn with more than a 50 percent BVAP?

21 A. I was instructed by them that the
22 district should be drawn with a
23 African-American percentage in excess of 50
24 percent total VAP.

25 Q. Okay. Did you receive a similar

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1 instruction from them with regard to District
2 12?

3 **A.** No.

4 **Q.** Did you receive any instructions from
5 Senator Rucho and Representative Lewis with
6 regard to the partisan advantage that should be
7 provided the Republicans in drawing the
8 districts?

9 **A.** Yes.

10 **Q.** And what were those instructions?

11 **A.** My instructions were to draw the plan to
12 make it -- have an increased number of
13 competitive districts for GOP candidates.

14 **Q.** And did you make any evaluation of the
15 likely results -- partisan results of the plan
16 enacted by the General Assembly?

17 **A.** Yes.

18 **Q.** And what was that estimate?

19 **A.** That -- that three of the districts were
20 most certainly going to be strong Democratic
21 districts, and that the remaining districts
22 would be more competitive or remain competitive
23 for Republican candidates.

24 **Q.** And those three strong Democratic
25 districts were?

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1 A. One, 4 and 12.

2 Q. Okay. And what was the result of the
3 2012 election with regard to partisan advantage?

4 A. Four Democrats won election to the House
5 of Representatives -- U.S. House of
6 Representatives, and the remainder were
7 Republicans.

8 Q. Now, when you -- as you were drawing the
9 plans, did Senator Rucho and Representative
10 Lewis give you any instructions as to whether
11 partisan advantage or competitiveness was to
12 take precedence over compliance with the Voting
13 Rights Act as you drew the districts?

14 A. No.

15 Q. Okay. As you were drawing the districts,
16 did you weigh partisan advantage more heavily
17 than compliance with the Voting Rights Act?

18 A. For the plan as a whole?

19 Q. Yes.

20 A. For the plan as a whole, I would have to
21 say, yes; but the plan was compliant with the
22 Voting Rights Act. There were many, many -- 12
23 of the 13 districts were drawn as political
24 districts.

25 Q. As you were drawing Congressional

1 District 1, did you give precedence to
2 compliance with the Voting Rights Act over
3 partisan advantage in constructing that district?

4 A. I would not say so, no.

5 Q. Okay.

6 A. It was a factor certainly, but it was
7 not the predominant factor.

8 Q. Okay. What was the predominant factor?

9 A. Well, as you -- as probably you don't
10 know, when -- when you're drawing a plan, of
11 course, the plan is a whole plan -- a whole map
12 of the State. And so, every district plays
13 into every other district, and the map which
14 the Republicans inherit -- inherited had
15 districts which were not equal in population.

16 The entire reason you redistrict to begin
17 with is to equalize the population. So,
18 certainly equality of population was a
19 preeminent factor.

20 Q. Okay.

21 A. Another factor was to rema- -- to retain
22 the cores of many of the districts. In fact, I
23 think most of them retained their cores; and
24 also to, again, shift the populations.

25 With regard to District 1, one -- one of

1 the problems with District 1 was that it was
2 underpopulated by, I believe, 97,600 people or
3 something like that; and population would have
4 to be added to the district. The new district
5 would have to have 97,000 more people in it.

6 One of the other factors that concerned
7 the -- the Chairmen was that District 1 was the
8 most underpopulated district in the previous
9 plan, and we were trying to ameliorate that
10 situation in the drafting of the new district
11 so that the difference in population between
12 the -- all the districts in the plan would --
13 would stay smaller as the decade progressed.

14 Q. Okay.

15 A. The other thing was that the population
16 needs of the surrounding districts had to be
17 taken care of too. Once again, District 1 was
18 not drawn in a vacuum. So, the populations had
19 to be adjusted.

20 Q. Okay.

21 A. And, of course, the political goals of
22 the General Assembly in the plan had to be
23 taken into account too.

24 Q. Okay. Let me talk about District 12 for
25 just a minute. When you were drawing District

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1 12, did partisan advantage take precedence over
2 compliance with the Voting Rights Act?

3 A. Yes.

4 Q. Now, let me ask you this: when you
5 began drawing the Congressional districts, did
6 you start with the existing plan and modify it;
7 or did you start from scratch?

8 A. In drawing almost any redistricting plan,
9 particularly in a state for Congressional
10 districts where the number of districts has not
11 changed because of reapportionment, the -- the
12 normal starting point is always from the
13 existing districts.

14 But once again, it's the whole map, and
15 the needs of the whole map. So, we had areas
16 where there was more population than needed,
17 and we had areas where there was less
18 population needed. So, all that had to be
19 adjusted.

20 And, of course, so all the plans -- all
21 the maps, districts had to be shifted around in
22 order to accommodate the goals of the whole
23 plan.

24 Q. Okay. But you began with the existing
25 plan?

1 A. Yes.

2 Q. Okay. Now, did you draw the districts
3 in any particular sequence; that is, did you
4 focus first on District 1?

5 A. It was my instruction and it would have
6 been the normal practice in any state I drew
7 where we had Section 2 or Section 5 issues to
8 pay particular attention from the beginning of
9 the plan to a district that was covered.

10 Aside from that, an analysis, of course,
11 had to be made about how the districts had to
12 be shifted from one spot to another. And as is
13 in the case of any plan drafting, you go
14 through many iterations of the map before it
15 even is made public.

16 Q. Unh-hunh (yes). Okay. So, it would be
17 accurate that the first district you focused on
18 was Congressional District 1?

19 MR. FARR: Objection to the form.

20 A. I really don't agree with your premise or
21 your question there.

22 Q. (Mr. Speas) Okay.

23 A. It was always in my mind. I was
24 focusing first on the -- the nature of the
25 whole plan -- the holistic view of the plan,

1 and where the shifts needed to be and what had
2 to be done in the whole plan.

3 And when you're doing that, you work your
4 way back and forth across the map many times,
5 tugging and pulling at districts, and looking
6 at them, and other people are looking at them.

7 And so, I would say your premise in that
8 question is -- is not -- doesn't work for me.

9 Q. What does work for you is that District 1
10 was always in your mind?

11 A. It was in my mind when I was drawing it
12 and the results of what would be there, but so
13 were the other districts.

14 Q. Okay. But it was in the front of your
15 mind, correct?

16 MR. FARR: Objection to the form.

17 A. It was always important to circle back if
18 necessary, depending on where I was drawing,
19 and see how all the pieces of all the districts
20 pieced together. But once again, my
21 instruction from the Chairmen was to draw a
22 legal map that would qualify in a one person
23 one vote, and that would qualify under the
24 Voting Rights Act.

25 And then the political goals were going

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1 to be taken into account; and, of course, there
2 are always the needs and desires of incumbents,
3 some of which are good ideas and some of which
4 maybe aren't good ideas.

5 Q. (Mr. Speas) And when you circled back to
6 Congressional District 1 as you were working on
7 the rest of the map, did you circle back to
8 make sure that it remained above 50 percent
9 total black voting age population?

10 A. Again, my understanding and instructions
11 were because of Strickland, if the district
12 were to be drawn as a Voting Rights Act
13 district, it had to be in excess of 50 percent,
14 I would say, TVAP.

15 Q. Okay. I understand. Now, was -- where
16 was Congressional District 12 in your mind as
17 you were drawing the whole plan? Was it just
18 after Congressional District 1 or was it
19 someplace else?

20 MR. FARR: Objection to the form.

21 A. Again, I -- if you've ever drawn a plan,
22 you would know that I was focusing from
23 district to district to district and back and
24 forth and forth and back. So, it wasn't a
25 situation where I was saying, "Well, what does

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1 this do to 12, or what does this do to 1?"

2 Because, you may be working in an entirely
3 different area of the State. The -- the
4 mission here was to create a legal plan first
5 off, and to make sure that it would pass muster
6 under the Voting Rights Act, both Section 5 and
7 Section 2.

8 Q. (Mr. Speas) Okay.

9 A. So, if you've ever drawn a map, you
10 would know that you're just -- you're thinking
11 of the task at hand, which is the district that
12 you're drawing on.

13 Q. Okay.

14 MR. SPEAS: I'm going to ask the
15 court reporter to mark this document as Exhibit
16 11.

17 (Plaintiffs' Exhibit 11 Marked for
18 Identification.)

19 Q. (Mr. Speas) Dr. Hofeller, I would ask
20 you to review Exhibit 11, and then ask you
21 whether or not it is the public statement
22 issued by Senator Rucho and Representative
23 Lewis on July 1, 2011 regarding the 2011
24 Congressional Plan?

25 A. It's a true copy. It certainly is.

1 Q. Okay. Did you assist in preparing that
2 document?

3 A. I did not.

4 Q. Okay. Did you review the document
5 before it was released?

6 A. I don't recollect whether I saw it before
7 or after it was released.

8 Q. Did -- to your memory, did Senator Rucho
9 or Representative Lewis seek your advice in
10 preparing this document?

11 A. They did not.

12 Q. Have you reviewed this document before?

13 A. Yes.

14 Q. Okay.

15 A. Before this --

16 Q. Before this deposition.

17 A. -- deposition, yes.

18 Q. You have?

19 A. Yes.

20 Q. Okay. And does Exhibit 11 reflect the
21 directions you received from Representative
22 Lewis and Senator Rucho in drawing the
23 Congressional plan.

24 MR. FARR: I think you should make
25 sure you read the whole thing.

1 A. Yes, I would -- I would actually have to
2 sit down and read it in really great detail to
3 see if it correlates exactly. In general it
4 does, yes.

5 Q. (Mr. Speas) All right. Well, let me
6 call your attention to some specific parts of
7 Exhibit 11. If you would look on page 2 at
8 paragraph 1, was one of the instructions you
9 received to use the current Congressional plan
10 as a frame of reference?

11 A. I think by the time that this statement
12 was written, it was clear that that had already
13 been done.

14 Q. Okay. So, the plan you drew met this
15 instruction; or, rather, let me put it this
16 way: in drawing the plan, you used the current
17 plan as the frame of reference?

18 MR. FARR: Objection to the form.

19 A. I don't understand what you mean by
20 "frame of reference."

21 Q. (Mr. Speas) I'm using the term that
22 Senator Rucho and Representative Lewis used.

23 MR. FARR: I think it says, "a
24 frame of reference."

25 Q. (Mr. Speas) Did you understand what --

1 do you understand what they meant when they
2 said, "Use of current congressional plan as a
3 frame of reference"?

4 A. I would understand that it's the way we
5 would start any plan. So, yes, it's -- it's a
6 frame of reference.

7 Q. Okay.

8 A. It's always a frame of reference in the
9 districting.

10 Q. All right. And in drawing the plan, you
11 used the 2001 plan as a frame of reference in
12 accordance with --

13 A. Yes, as a frame.

14 Q. Okay.

15 A. Okay.

16 Q. Now, would you turn with me to page 3?
17 And there is a sentence -- paragraph midway
18 that begins, "The State's First Congressional
19 District was originally drawn in 1992 as a
20 majority black district. It was established by
21 the State to comply with Section 2 of the
22 Voting Rights Act. Under the decision by the
23 United States Supreme Court in Strickland v.
24 Bartlett, the State is now obligated to draw
25 majority black districts with true majority

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1 black voting age population."

2 Was that an instruction you received from
3 Representative Lewis and Senator Rucho, that
4 the State is obligated to draw majority black
5 districts with true majority black voting age
6 population?

7 A. Did you say districts?

8 Q. That's -- I'm reading --

9 A. Could you just restate your question,
10 please?

11 Q. Okay.

12 A. Thank you.

13 Q. In Exhibit 11, Senator Rucho and
14 Representative Lewis state, quote, "The State
15 is now obligated to draw majority black
16 districts with true majority black voting age
17 population."

18 Did you receive an instruction from
19 Senator Rucho and Representative Lewis to draw
20 majority black districts with a true majority
21 black voting age population?

22 MR. FARR: Object to the form
23 because you're quoting half the sentence.

24 Q. (Mr. Speas) Can you answer the question?

25 A. It was my understanding -- and, again,

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1 this has been three years. So, it was my
2 understanding that if you were going to draw a
3 Section 2 or Section 5 district, that because
4 of Strickland, you had to draw it over 50
5 percent.

6 Q. Okay.

7 A. I understood that, yes.

8 Q. Okay. And that was an instruction you
9 received from Rucho and Lewis?

10 A. Yes.

11 Q. Okay. Let's turn to page 5 of Exhibit
12 11 where the first of the page talks about the
13 Twelfth District.

14 A. Yes.

15 Q. And I would call your attention,
16 specifically, to the paragraph midway of that
17 page which says, quote, "Because of the
18 presence of Guilford County in the Twelfth
19 District, we have drawn our proposed Twelfth
20 District at a black voting age level that is
21 above the percentage of black voting age
22 population found in the current Twelfth
23 District. We believe that this measure will
24 ensure pre-clearance of the plan."

25 Did I read that accurately?

1 A. You did.

2 Q. Okay. Did you receive an instruction from
3 Representative Lewis and Senator Rucho to draw
4 the Twelfth District at a black voting age
5 level that is above the level -- black voting
6 age level in the current Twelfth District?

7 A. Actually, my understanding of the issue
8 was because Guilford was a Section 5 county and
9 because there was a substantial
10 African-American population in Guilford County,
11 that if the portion of the African-American
12 community was in the former District 13 -- was
13 a strong -- which was a strong Democratic
14 district was not attached to another strong
15 Democratic district, that it could endanger the
16 plan and make a challenge to the plan.

17 And that's where that concern generated
18 from.

19 Q. Okay. And did that concern come from
20 Senator Rucho and Representative Lewis or
21 elsewhere?

22 A. It came from them.

23 Q. Okay. Now, let me call your attention
24 now, Dr. Hofeller, to page 7 and in particular,
25 paragraph 7 on page 7. Did you -- in that

1 paragraph, Senator Rucho and Representative
2 Lewis state, quote, "We have attempted to
3 respect county lines and whole precincts when
4 it was logical to do so and consistent with
5 other relevant factors."

6 Did you receive an instruction from
7 Representative Lewis and Senator Rucho to
8 respect county lines when logical to do so?

9 A. Yes, and consistent with other relevant
10 factors.

11 Q. Okay. And what were those other
12 relevant factors as you understood them?

13 A. Well, my relative factors were to, again,
14 draw a plan that was legal which fulfilled the
15 Federal criteria of one person one vote, and
16 which would pass muster under Section 2 and
17 Section 5 of the Voting Rights Act;
18 particularly, to get pre-cleared.

19 Q. Okay. So, if the Voting -- compliance
20 with the Voting Rights Act required the
21 division of a county, you divided a county,
22 correct?

23 MR. FARR: Objection to the form.

24 A. Once again, I have to state that the --
25 the one Section 2 county -- Section 2 district,

1 District 1, was not drawn in a vacuum. And so,
2 in order to accomplish all of the goals in the
3 drawing of Section (sic) 1 and all of the
4 surrounding districts and the whole plan, it
5 became necessary to split some precincts, and
6 they were split.

7 Q. I'm not talking about split precincts
8 right now. I'm talking about county splits.

9 A. Well, and counties also.

10 Q. Okay.

11 A. Yes.

12 Q. So, when was it logical to split a
13 county as you were -- when did you conclude it
14 was logical to split a county when you were
15 drawing the plan?

16 A. Well, certainly, if you could not make a
17 -- a legal district out of whole counties, you
18 would have to split counties.

19 Q. Okay. And a legal district would be one
20 that was required by Section 2?

21 A. Yes.

22 Q. And the Voting Rights Act?

23 A. I believe that's part of --

24 Q. Well, I guess it may be about all of it
25 now.

1 A. No, I don't think so, but I won't get
2 into a legal discussion with you.

3 Q. Okay, okay.

4 A. I'll leave that to your fellow attorneys.

5 Q. Okay. When else was it logical to split
6 a county?

7 A. Well, again, you might split a county --
8 you have to, certainly, split counties in order
9 to meet one person one vote. You might have to
10 split counties to transition.

11 Q. Transition?

12 A. The plan.

13 Q. Transition --

14 A. From one place to another.

15 Q. Okay.

16 A. You might have to split precincts because
17 of incumbencies.

18 Q. What about partisan advantage?

19 A. There might be a case of that, yes.

20 Q. Okay. Now, I'm focused on whole
21 counties. Let me now talk about split
22 precincts just a moment. You were instructed
23 to attempt to respect precinct lines as you
24 were drawing this plan?

25 A. Yes.

1 Q. Okay. And there are occasions when you
2 did split precincts, correct?

3 A. That's correct.

4 Q. And when was it logical in your estimate
5 to split a precinct?

6 A. Well, again, it might be the same person
7 -- the same purpose for which we would split a
8 county. It could be a transit. It could be
9 an incumbency. It could be to equalize the
10 populations. It could be in the case of the
11 First to, again, comply with the Voting Rights
12 Act and to comply with some of the input that
13 we had from the public and from members on the
14 plan.

15 Q. Okay. And, in fact, in Exhibit 11 on
16 page 7 in paragraph 7, Senator Rucho and
17 Representative Lewis state; and I quote, "Most
18 of our precinct divisions were prompted by the
19 creation of Congressman Butterfield's majority
20 black First Congressional District or when
21 precincts needed to be divided for compliance
22 with the one person one vote," correct?

23 A. On what page?

24 Q. Page 7, paragraph 7.

25 A. Oh, okay. I'm sorry.

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1 Q. I was --

2 A. Page 7, 7?

3 Q. Yes, 7, 7, the last sentence.

4 A. That's true.

5 Q. Okay. And is that an accurate statement,
6 that the -- most of the precincts that were
7 divided in the Congressional plan were divided
8 in the creation of Congressman Butterfield's
9 Congressional District 1 or one --

10 A. Yes.

11 Q. -- person one vote?

12 A. Yes, yes.

13 Q. Okay.

14 A. Well, and once again, several other
15 reasons.

16 Q. Okay.

17 MR. SPEAS: Now, let me ask the court
18 reporter to mark Exhibit 12.

19 (Plaintiffs' Exhibit 12 Marked for
20 Identification.)

21 Q. (Mr. Speas) Dr. Hofeller, I have placed
22 in front of you a document bearing the
23 letterhead of the North Carolina General
24 Assembly and the title "Joint Statement of
25 Senator Bob Rucho and Representative David

1 Lewis regarding the release of Rucho-Lewis
2 Congress 2."

3 I would ask you if you have ever seen
4 Exhibit 12 before?

5 A. I have.

6 Q. Okay. And did you assist Senator Rucho
7 and Representative Lewis in preparing this
8 document?

9 A. I did not.

10 Q. Did you review this document before it was
11 released?

12 A. I did not.

13 Q. Did you have discussions -- have you
14 reviewed Exhibit 12 since it was published?

15 A. I have.

16 Q. Okay. And it does not bear a date, but
17 let me just say for the record that the
18 Legislative website reports that this document
19 was published on July 19, 2011.

20 Let me ask you, Dr. Hofeller, to turn to
21 page 4 of Exhibit 12. And I would call your
22 attention specifically to the last paragraph,
23 and I would -- that paragraph says, "In
24 adopting the Twelfth District, we intended to
25 accommodate the wishes expressed to us by

1 Congressman Watt, as we understood them, to
2 continue to include populations located in
3 Mecklenburg, Guilford and Forsyth Counties.

4 "Our revised version of this district
5 makes it more compact and continues the
6 district as a very strong Democratic district.
7 Our version of the Twelfth District is based
8 upon whole precincts that voted heavily for
9 President Obama in the 2008 General Election."

10 Did I read that correctly?

11 **A.** You did.

12 **Q.** Okay. Let me first ask you about their
13 statement that District 12 in the enacted plan
14 is more compact than District 12 in the former
15 plan?

16 **A.** I haven't reviewed that.

17 **Q.** You have not?

18 **A.** I can't answer that.

19 **Q.** Okay. What instructions did you receive
20 from Senator Rucho and Representative Lewis
21 about compactness in the Congressional plan --
22 in drawing the Congressional plan?

23 **A.** I was -- I don't remember actually
24 receiving any specific instructions, except the
25 generalized fact to make plans as compact as

1 possible with the goals and policies of the
2 entire plan.

3 Q. Okay. And as you were drawing the
4 plans, did you occasionally apply the
5 mathematical measures of compactness to see how
6 the districts were holding up?

7 A. No.

8 Q. Okay. And at the end of the process,
9 did Senator Rucho and Representative Lewis ask
10 you if the districts were compact in your
11 judgement?

12 A. Not that I recall.

13 Q. Okay. And at the end of the process,
14 did you on your own form any opinion as to
15 whether the districts were compact?

16 A. Some were; some weren't.

17 Q. Did you form an opinion as to whether
18 District 12 was compact?

19 A. My opinion on District 12 was that
20 District 12's compactness was in line with
21 former versions of District 12 and in line with
22 compactness as one would understand it in the
23 context of North Carolina redistricting; and,
24 indeed, in the context of redistricting across
25 the country.

1 Q. And on one occasion, you described a
2 former version of Congressional District 12 as
3 the least compact district you'd ever seen,
4 didn't you?

5 MR. FARR: Objection to the form.

6 A. I -- if I made that statement, you have
7 some -- I might have said it. It depends on
8 when I made that statement. There's been a lot
9 of districts, maybe, after that happened --
10 there's been a lot of 'em this round that have
11 been pretty extreme.

12 Q. (Mr. Speas) Do you recall making that
13 statement with regard to the 1991 version of
14 Congressional 12?

15 A. I don't recall making it, but I would
16 not be at all surprised if I had made it. It's
17 been a feature of PowerPoints by many, many,
18 many different people.

19 Q. Okay. Now, as you completed the plan,
20 did you form an opinion as to whether or not
21 Congressional District 1 was compact?

22 A. Within the context, again, of North
23 Carolina plans, I did not believe that the --
24 that the new District 12 (sic) had a
25 compactness issue.

1 Q. Okay. Now, let me call your attention --

2 MR. FARR: Were you asking about 12
3 or 1?

4 MR. SPEAS: About 1.

5 MR. FARR: Well, he --

6 A. I'm sorry. I gave you a 12 answer,
7 didn't I?

8 Q. (Mr. Speas) I'm sorry. You did.

9 MR. SPEAS: Thank you, Tom.

10 Q. (Mr. Speas) I was asking about District
11 1.

12 A. Again, within the context of the history
13 of Congressional District 1, I certainly did
14 not believe that there was an issue with the
15 compactness of that district, again, in the
16 North Carolina compactness.

17 Q. Did you form an opinion as to whether
18 the 2011 version of Congressional 1 was more
19 compact than earlier versions of Congressional
20 1?

21 A. I'm not really sure that that's a relevant
22 comparison. I mean, the former plans were all
23 drawn in a different context. In many cases,
24 there were different numbers of districts, the
25 distribution of the demographics, both

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1 demographics racially and ethnically; and
2 population levels were different in all the
3 plans.

4 So, it's -- it's very hard to compare one
5 year to another because all the other factors
6 weigh very heavily on how those districts are
7 formed.

8 Q. So, would it be accurate then that you
9 made no judgement with respect to whether the
10 2011 version of Congressional 1 was more
11 compact than the 2001 version of Congressional
12 1?

13 A. Again, please restate that.

14 Q. You made no judgement at the end of the
15 2011 process regarding whether Congressional 1
16 in 2011 was more or less compact than the 2001
17 version of Congressional 1?

18 A. Again, I don't understand what you mean
19 by "the end."

20 Q. Okay. I'm not sure how I can clear up
21 my unclear question.

22 A. I mean, it's still going on, is it not?

23 Q. What's still going on?

24 A. The process. We're in court.

25 Q. Oh, we're in court?

1 A. Okay.

2 Q. Did you make a decision in 2011 when
3 Congressional District 1 was enacted as to
4 whether it was more compact than the 2001
5 Congressional 1?

6 A. Again, as I stated previously, I didn't
7 think that it was a relevant thing to do.

8 Q. Okay. All right, thank you.

9 A. Okay.

10 Q. Now, let me ask you about the next
11 sentence on page 4 of Exhibit 12, which is, and
12 I quote, "Our revision of the Twelfth District
13 is based upon whole precincts that voted
14 heavily for President Obama in the 2008 General
15 Election."

16 Did I read that correctly?

17 A. Again, I'm trying to find it.

18 Q. It's at the bo- -- fourth line up from
19 the bottom of page 4. "Our revision of the
20 Twelfth District is based upon whole precincts
21 that voted heavily for President Obama in the
22 2008 General Election."

23 Did I read it correctly?

24 A. You did.

25 Q. Okay. Did you receive an instruction

1 from Senator Rucho and Representative Lewis to
2 draw District 12 based on the 2008 Obama vote?

3 **A.** I think that was my decision.

4 **Q.** Okay. And did you --

5 **A.** And --

6 **Q.** Go ahead.

7 **A.** And there were many, many factors that
8 played into the creation of District 12, and
9 all of them were political. So, once again, I
10 have to state that District 12 was not drawn in
11 a vacuum. It was drawn in the context of the
12 districts that immediately surrounded it and in
13 the context of the whole State. So --

14 **Q.** Did --

15 **A.** But --

16 **Q.** Go ahead.

17 **A.** No, that's all right.

18 **Q.** Did you look at the Obama 2008 vote in
19 deciding which districts -- I'm sorry -- which
20 VTDs or census blocks to include in
21 Congressional 12 or not include in
22 Congressional 12?

23 **A.** You really asked -- there are two parts
24 to that question.

25 **Q.** Okay. Can you answer them?

1 A. Okay. First of all, you don't have
2 Obama vote by block.

3 Q. Okay.

4 A. So, it couldn't have been a factor in
5 where the blocks were -- where there were
6 splits.

7 Q. Okay.

8 A. Secondly, it was certainly an important
9 factor in the placement of the boundaries of
10 the Twelfth District, but there were other
11 political and demographic factors; and by that,
12 I mean population factors that played into
13 which precincts were put in the district as I
14 have explained in previous reports.

15 Q. Okay. Did you use the Obama 2008 vote
16 in deciding whether to put a VTD in District 12
17 or to put it outside District 12?

18 A. In many cases, yes.

19 Q. Okay.

20 A. Not exclusively.

21 Q. We'll get to that. And when you were
22 deciding whether to put a district -- a VTD in
23 District 12 or not, did you look at the level
24 of the Obama vote?

25 A. The percentage, yes.

1 Q. Okay. And if the percentage were less
2 than 50 percent for Obama, did you have a rule
3 as to what you would do with the district --
4 the VTD? I'm sorry.

5 A. I'm sorry. I'm trying to follow your
6 question, but --

7 Q. Okay. As you were looking at the Obama
8 vote, did you look at the percentage of the
9 vote for Obama in deciding whether to put the
10 VTD in District 12 or not?

11 A. In many cases, yes.

12 Q. Okay. And if the percentage vote for
13 Obama were higher, more than 50 percent, was
14 that a factor that led you to put the VTD in
15 Congressional 12?

16 A. In some cases; in other cases, it was --
17 there were other factors at play.

18 Q. Okay. In Exhibit 12, Senator Rucho and
19 Representative Lewis state that the revision of
20 the Twelfth District is based upon whole
21 precincts that voted heavily for President
22 Obama in the 2008 General Election.

23 Do you know -- do you have some
24 understanding of what they meant when they
25 said, "voted heavily for President Obama"?

1 A. I think you'd really have to ask them
2 what they thought they meant by it.

3 Q. Okay. Did you place districts in 12 or
4 out of 12 based the heaviness of the Obama vote?

5 A. In many cases, yes.

6 Q. Okay. The higher the Obama vote, the
7 more likely you would put the VTD in 12,
8 correct?

9 A. Again, in most cases, yes.

10 Q. The lower the Obama vote, the more
11 likely you would place the VTD outside District
12, correct?

13 A. I don't think that that's a fair
14 conclusion to make. I mean, there are many
15 factors, again, playing into the actual
16 construction of District 12. It's a very
17 complex district. And some of the precinct
18 placements obviously were -- actually, VTDs, I
19 might use them interchangeably -- were more
20 mandated by holding the district together.

21 Q. Okay. It had to be contiguous?

22 A. That's now a requirement. It wasn't a
23 requirement in past Congressional plans in the
24 State.

25 Q. Okay. Now, did you inform Senator Ruch

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1 and Representative Lewis that you were drawing
2 12 -- the Twelfth District based on the whole
3 precincts that voted heavily for President
4 Obama?

5 **A.** My instructions were I was to create a
6 heavily Democratic district.

7 **Q.** Okay.

8 **A.** And by creating a heavily Democratic
9 district, Democratic voting strength would be
10 withdrawn from the surrounding districts which
11 would make the surrounding districts more
12 competitive for Republicans.

13 **Q.** Okay.

14 **A.** Some of those districts had requirements
15 that were different from other districts. So,
16 it was a balancing act of the Twelfth in
17 relationship to all the other surrounding
18 districts, which would be my understanding of
19 how it was drawn previously, too.

20 **Q.** And Senator Rucho and Representative
21 Lewis did not disagree with the decision you
22 made?

23 MR. FARR: Objection to the form.

24 **Q.** (Mr. Speas) They did not inform you
25 that they disagreed with your decision?

1 A. I think if you know Senator Rucho, you'd
2 know that if he disagreed with something I did,
3 I would know it.

4 Q. Okay. All right. Now, you -- one of
5 your areas of expertise is voting behavior,
6 correct?

7 A. Yes.

8 Q. Okay. And you used your expertise in
9 voting behavior in constructing the 2011 plan?

10 A. To some extent. Most of my voting
11 behavior experience was -- is with election
12 targeting and such; but, again, the -- there
13 were certain partisan policy goals which the
14 General Assembly wanted to fulfill in the
15 construction of this map. And, certainly, my
16 knowledge of political data and how it plays
17 into the winning of elections is just
18 internalized in my mind.

19 Q. Okay. Based on your past experience and
20 your knowledge, did you count a vote for Obama
21 as a vote for a black or a Democrat?

22 A. A Democrat.

23 Q. Okay. Did you use any other election
24 results in putting VTDs in or outside of
25 Congressional 12?

1 A. I'm sorry? Did you say political --

2 Q. Did you use any elections other than the
3 2008 Obama election in putting districts in or
4 outside --

5 A. I did not.

6 Q. Okay. You've draw a lot of plans.

7 A. Many, many plans.

8 Q. Many, many, many plans -- hundreds
9 probably, correct?

10 A. I don't know if it's hundreds, but a lot.

11 Q. In drawing other plans, have you ever
12 placed a VTD in or outside a district based on
13 the results of a single election?

14 A. Yes.

15 Q. And can you -- have you ever done that
16 -- did you do that with any other North
17 Carolina district, Congressional or --

18 A. I may have. You know, it's been a long
19 time since this last process.

20 Q. Okay.

21 A. I think most people over-complicate these
22 things.

23 Q. Okay. Do you recall any State
24 legislative district you drew in 2011 that you
25 used only the results of a single election in

1 putting VTDs in or outside the district?

2 A. In -- in many cases as part of my
3 general work, I would evaluate states and how
4 they could be redistricted; and in many of
5 those cases, I would use the presidential vote
6 because the presidential vote is the most
7 recent and in many states it might be the only
8 50/50 or near 50/50 contested election with
9 full turnout and with the kinds of knowledge
10 and communications in them.

11 And I think it's a -- a very good thing
12 to look at. Also, when you're comparing old
13 districts to new districts, in some of those
14 cases, I would use one election; and in other
15 cases, I might use two or three elections.

16 Q. But to answer my question, do you recall
17 any district you drew in either the State House
18 or State Senate in 2011 in which you used the
19 results of a single election in assigning a VTD
20 to a district?

21 A. I'd have to think about that.

22 Q. Well, let me be more specific. Do you
23 recall any other Congressional district other
24 than 12 in which you used the results of the
25 2008 Obama election to assign a VTD to the

1 district or not?

2 A. Other than --

3 Q. Other than CD 12.

4 A. Yes, of course.

5 Q. Okay. Which ones?

6 A. I'm sorry. I -- I was using the
7 McCain/Obama vote across the State.

8 Q. Okay. In forming --

9 A. That's the way I understood your question.

10 Q. In forming Congressional 12 -- I mean, the
11 Congressional plan?

12 A. Yes.

13 Q. Okay. All right. Thank you.

14 A. I'm sorry. I thought I -- you thought I

15 --

16 Q. I misunderstood.

17 A. Could I get a break here?

18 Q. Yes, absolutely.

19 (SHORT BREAK 10:20 - 10:25 A. M.)

20 Q. (Mr. Speas) Let me give my last set of
21 questions one more try. Here's my question:
22 when you were drawing the Congressional plan,
23 did you use any election results other than the
24 Obama 2000 (sic) election results in assigning
25 VTDs to one district or another?

1 A. Not that I can recall.

2 Q. Okay. In drawing the Legislative plans,
3 the State House and the State Senate, do you --
4 did you use election results other than the
5 Obama 2008 election results in assigning VTDs
6 to districts?

7 A. I don't really recall. I had a lot of
8 advice from many, many people on that, and as
9 you recall, the Legislative map draws itself to
10 a very great extent.

11 MR. SPEAS: And let's mark as
12 Exhibit 13 this next document.

13 (Plaintiffs' Exhibit 13 Marked for
14 Identification.)

15 Q. (Mr. Speas) Dr. Hofeller, Exhibit 13, I
16 would represent to you, was printed off of the
17 Legislature's redistricting website; and I
18 would ask you if you have seen that document
19 before?

20 A. To be truthful, I don't recall that I
21 have seen that document before. I certainly
22 computed the same data. It would be probably
23 one of the very first steps that you would look
24 at. Even before you start drawing, people in
25 states and in Washington, D.C. are looking at

1 the pluses and the minuses of all the districts.

2 Q. Okay. And this document simply reports
3 the amount by which any district was --
4 existing district -- the 2001 district was over
5 or under the ideal population for 2011
6 purposes, correct?

7 A. Yes.

8 Q. And this document reports that District
9 12 was overpopulated by 2,847 people?

10 A. Yes.

11 Q. And that District 1 was underpopulated by
12 97,563 people?

13 A. Yes.

14 Q. Okay. And the same numbers -- the same
15 result is reported for other districts?

16 A. True.

17 Q. Okay. Now, I want to show you Exhibit
18 14.

19 (Plaintiffs' Exhibit 14 Marked for
20 Identification.)

21 Q. (Mr. Speas) Dr. Hofeller, I would
22 report to you that Exhibit 14 is a collection
23 of maps of District 12 as it appeared in
24 Rucho-Lewis Congress 1, Rucho-Lewis Congress 2,
25 Rucho-Lewis Congress 2A, and Rucho-Lewis

1 Congress 3.

2 Does this document appear to contain those
3 districts -- those versions of Congressional 12?

4 A. You know, I can't verify --

5 Q. Okay.

6 A. -- with any high degree of certainty.

7 It looks right to me.

8 Q. Okay. My question is this: looking at
9 Exhibit 13 (sic), and based on your memory, is
10 it correct --

11 MR. FARR: It's 14.

12 MR. SPEAS: Fourteen. I'm sorry.

13 Q. (Mr. Speas) Is it correct that
14 Congressional District 12 did not change much,
15 if at all, through the various iterations
16 presented to the General Assembly; Rucho-Lewis
17 Congress 1, 2, 2A and 3?

18 A. (Witness peruses Exhibit.) Okay. Now,
19 that I've looked at all four maps, I need you
20 to repeat your question.

21 MR. FARR: Well, I may want you to
22 look at these first. (Indicating other
23 documents.)

24 Q. (Mr. Speas) Well, let me just put my
25 question on the table so you can think about it

1 when you're looking at whatever Tom wants you
2 to look at.

3 My question is simply this: from the
4 time it was first introduced as Rucho-Lewis
5 Congress 1 until the time it was enacted as
6 Rucho-Lewis Congress 3, there was no
7 significant change in the shape or location of
8 the district? It was enacted essentially as it
9 was first introduced? That's the question.

10 A. Did you want me to look at something?

11 (Addressing Mr. Farr)

12 MR. FARR: You might want to look
13 at these color versions just because -- well,
14 go ahead and answer the question.

15 A. Okay. I'm going to answer your question.

16 Q. (Mr. Speas) Okay.

17 A. Again, it depends on what you judge as
18 significant. You know, in a redistricting
19 plan, a movement of one VTD could be extremely
20 significant, particularly, to an incumbent.
21 So, in order to answer that question with a
22 high degree of precision, I'd have to do a
23 comparison on the system between the plans to
24 see what happened.

25 So, I think substantially the same would

1 be a better definition.

2 Q. Okay. And do you recall making any
3 changes in Congressional 12 from the time it
4 was introduced as Rucho-Lewis Congress 1 until
5 it was enacted?

6 A. Yes, I did.

7 Q. Okay. And do you recall what those
8 changes were?

9 A. Not specifically, no. I'd have to go
10 back and review, again.

11 Q. Okay. Do you recall any of those
12 changes as being significant as you would use
13 the term significant?

14 A. I don't use -- I'm not using the term
15 significant; you are.

16 Q. Okay.

17 A. I would --

18 Q. Were they significant to you?

19 A. Well, if they weren't -- if they weren't
20 important to be made, I wouldn't have made them.

21 Q. Okay.

22 MR. SPEAS: Let me ask the court
23 reporter to mark the next document as Exhibit
24 15.

25 (Plaintiffs' Exhibit 15 Marked for

1 Identification.)

2 Q. (Mr. Speas) Dr. Hofeller, you have in
3 front of you Exhibit 15, which I will report to
4 you is the "Stat. Pack Report of Voting Age
5 Population by Race Ethnicity, Rucho-Lewis
6 Congress 3 as printed off of the General
7 Assembly's website.

8 Do you recognize that document?

9 A. No, I'm having trouble seeing the
10 document; let alone recognize it.

11 MR. OLDHAM: That was what I was
12 going to ask you, is --

13 A. And the pages are stapled together
14 incorrectly.

15 MR. SPEAS: I'm sorry?

16 MR. OLDHAM: I said as soon as I
17 saw this, I knew he was going to have trouble
18 reading this.

19 A. Can I take it apart?

20 Q. (Mr. Speas) Yes, you can take it apart.

21 A. I don't know if it -- does anyone have a
22 magnifying glass?

23 MR. FARR: I do.

24 (DISCUSSION OFF RECORD.)

25 Q. (Mr. Speas) Do you recognize this as a

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1 report generated from the General Assembly's
2 website reporting the voting age population by
3 race for Rucho-Lewis Congress 3, the first
4 page, and Rucho-Lewis Congress 1, the second
5 page?

6 A. Yes.

7 Q. And looking at Congressional 12 as
8 enacted in Rucho-Lewis Congress 3, is it
9 correct that that district contains 269,987
10 black votes?

11 A. I'm sorry? What type of African-American?

12 Q. Blacks.

13 A. What -- there are several different --

14 Q. Does this report -- the black voting age
15 population for --

16 A. Okay.

17 Q. -- District 12 in Rucho-Lewis Congress 3
18 has 269,987?

19 MR. FARR: Which one are you on,
20 Eddie?

21 MR. SPEAS: The first page, the
22 Rucho-Lewis 3.

23 MR. FARR: 269,987?

24 MR. SPEAS: Yes.

25 MR. FARR: Yeah. We'll stipulate

1 that's what it says.

2 A. I can't find it.

3 MR. FARR: That's all right. It's
4 there.

5 A. 269 -- oh, that's total population; not
6 VAP.

7 Q. (Mr. Speas) No, it's voting age
8 population.

9 MR. FARR: It's voting age
10 population. It's not total black voting age
11 population.

12 A. I've got it. Yeah, I agree.

13 Q. And that the total black population is
14 275,812.

15 A. Say again now. I'm trying to look.

16 Q. 275,812 total black population District
17 12 in Rucho Congress 3.

18 A. Yes.

19 Q. Okay. Looking at the second page, was
20 the black population -- voting age population
21 in Rucho-Lewis Congress 1 268,871?

22 A. Yes.

23 Q. And was the total black population in
24 Rucho-Lewis Congress 1 for Congressional 12
25 274,671?

1 A. Yes.

2 Q. Okay.

3 MR. SPEAS: Now, let me ask the court
4 reporter to mark this as Exhibit 16.

5 (Plaintiffs' Exhibit 16 Marked for
6 Identification.)

7 Q. (Mr. Speas) Dr. Hofeller, would you
8 look at Exhibit 16, and tell me whether or not
9 this document contains information about
10 Congress Zero Deviation which was the 2001
11 enacted Congressional plan?

12 A. Appears to to me.

13 Q. Okay. And would you look at the third
14 page of that Exhibit 16 and tell me whether
15 that page lists the voting age population by
16 race by district for the 2001 plan?

17 MR. FARR: Was this by the 2000
18 census or the 2010 census?

19 MR. SPEAS: 2000 census.

20 A. (Witness peruses document.) It doesn't
21 say that on there, but --.

22 Q. (Mr. Speas) Okay.

23 A. Because you ask for it in different ways.

24 Q. You can, and I asked for it in 2000.

25 A. Okay.

1 Q. Let me ask you this -- and pull out your
2 magnifying glass.

3 A. I can read this.

4 Q. Oh, okay, good. In District 12 in 2001
5 by voting age population, were there 194,901
6 African-Americans in District 12?

7 A. The report so states, yes.

8 Q. Okay. Now, in 2011, District 12
9 contained 269,987 blacks, voting age
10 population. That's the number Tom agreed to.

11 MR. FARR: Which -- Eddie, I'm lost.

12 Where are --

13 A. That's off the previous report.

14 Q. (Mr. Speas) Exhibit 15.

15 MR. FARR: The enacted plan
16 contained -- the 2011 enacted plan --

17 MR. SPEAS: Contained 269,987 black
18 voting age population persons.

19 Q. (Mr. Speas) Is that correct?

20 A. May I ask my attorney a question off the
21 record?

22 Q. You sure may.

23 (DISCUSSION OFF RECORD.)

24 Q. (Mr. Speas) Comparing Exhibit 15 and
25 Exhibit 16, Dr. Hofeller, is it correct that --

1 MR. FARR: Eddie?

2 MR. SPEAS: Yes.

3 MR. FARR: Just to clarify, on
4 Exhibit 15, we're looking at voting age
5 population; not total population?

6 MR. SPEAS: Yes.

7 MR. FARR: Okay. I just think
8 there was some confusion in your question.

9 MR. SPEAS: Okay. All -- all these
10 numbers are voting age population.

11 MR. FARR: Right, right, just to
12 clarify for the record.

13 MR. OLDHAM: If you asked him what
14 the total population was --

15 MR. SPEAS: I did not mean to ask
16 about total population. I did -- there is the
17 category "Total Black" population.

18 MR. OLDHAM: But that is not total
19 population.

20 MR. SPEAS: That is not total
21 population. I understand that.

22 MR. OLDHAM: Okay.

23 Q. (Mr. Speas) Dr. Hofeller, my question is
24 this: based on Exhibit 15 and 16, is it correct
25 that District 12 as drawn in 2011 contains

1 approximately 75,000 more blacks than the
2 district contained in 2001?

3 MR. FARR: Under the 2- -- the 2001
4 district -- you're comparing the 2000 census to
5 the 2010 census?

6 MR. SPEAS: Yes, yes.

7 A. Yes. I don't know why that's relevant
8 though.

9 Q. (Mr. Speas) Okay. My -- my question to
10 you is this: how did you find these
11 approximately 75,000 black citizens in drawing
12 District 12?

13 A. Well, the -- the correct comparison are
14 the 2010 census figures of the old district to
15 the new district. Of course it would be
16 different. The populations were smaller then.

17 Q. But there are 75,000 more black citizens
18 in District 12 in 2011 than 2001, correct?

19 A. Again, I don't agree with the premise of
20 your question. The benchmark, if you have a
21 benchmark, which is really a Section 5 term,
22 would not be the district as it was in 2001.
23 It would be the district as it is at the end of
24 the decade with the new census.

25 So, the census found most of them.

1 That's where they came from.

2 Q. How did you go about fulfilling the
3 direction you received from Senator Rucho and
4 Representative Lewis to increase the black
5 voting age population in District 12?

6 A. I believe I've already mentioned that,
7 that -- that the issue there was really
8 Guilford County and the fact that the black
9 community was fractured by the Democrats in
10 2001 for the political purpose of making
11 District 13 more partisan in their favor.

12 And as that wasn't the objective of our
13 plan, there were new -- going to be a new bunch
14 of districts surrounding District 12 that we
15 were worried that there would be a challenge
16 because the black community would have been
17 fractured if the district were left in the same
18 place.

19 So, my instruction was not to increase the
20 population. My instruction was to try and take
21 care of that problem, Guilford, but the primary
22 instructions and overriding instruction in
23 District 12 was to accomplish the political
24 goal of making the district strongly Democratic
25 and pulling strongly Democratic voting areas

1 out of the surrounding districts to make them
2 more competitive or keep them competitive for
3 the Republicans.

4 That's what I believe I said last time
5 you asked me that.

6 Q. Is it an accident that the black voting
7 age population increased by several percent
8 from 2001 to 2011 in District 12?

9 A. An accident?

10 Q. Yes.

11 A. What do you mean by an accident?

12 Q. That was an inadvertent result? Was
13 that an intended result, or unintended result?

14 A. It was not an intended result. The
15 intended result was to increase the Democratic
16 voting strength in the Twelfth. It was that
17 when -- it was constructed after the Cromartie
18 case, and it was that -- it's been that ever
19 since. It's a political district; not a racial
20 district.

21 And the goal was to accomplish political
22 ends. The problem is that the Republicans'
23 political ends and objectives for that whole
24 area were entirely different than the
25 Republicans' objectives this time around.

1 And -- and it was influenced by that, and
2 it was influenced by population shifts. So, I
3 can't --

4 MR. FARR: Excuse me, Dr. Hofeller.

5 Did you mean the Democrats' interests were
6 different from the Republicans' interests? You
7 said Republicans twice.

8 **A.** I'm sorry. The primary difference
9 between the 2001 redistricting cycle and the
10 2011 redistricting cycle was that in the recent
11 cycle, the one we're still dealing with, the
12 Republicans were in control. In the last
13 cycle, the Democrats were in control, and they
14 had entirely different political objectives
15 that they wanted to accomplish in the creation
16 of this map as a whole.

17 **Q.** (Mr. Speas) So, your testimony is that
18 the increase in black total population in
19 District 12 from 2001 to 2011 is an inadvertent?

20 **A.** No, that's not my testimony.

21 **Q.** Is it your testimony that it is a
22 consequence of your use of the 2008 Obama
23 election results to assign VTDs to the district?

24 **A.** Partially.

25 **Q.** And what else?

1 A. The shape of the district, again, was
2 influenced by the goals of the Republican
3 redistricting group -- the General Assembly
4 majority in constructing the entire plan, and
5 the goal was to make the Twelfth District
6 stronger in terms of Democratic vote.

7 And when that was done, these were the
8 consequences.

9 Q. In their July 1, 2011 report to the
10 people of North Carolina, Senator Rucho and
11 Representative Lewis said, "Because of the
12 presence of Guilford County in the Twelfth
13 District, we have drawn our proposed Twelfth
14 District as a black voting age -- at a black
15 voting age level that is above the percentage
16 of black voting age population found in the
17 current Twelfth District."

18 Did you receive an instruction from
19 Senator Rucho and Representative Lewis to draw
20 the Twelfth District at a level above the
21 percentage of black voting age population in
22 the 2001 version?

23 A. No. As I said before in my previous
24 answer -- do you want me to repeat it?

25 Q. Yes, please.

1 A. Okay. The problem in Guilford County was
2 that Guilford County was a Section 5 county.
3 When the Democrats redistricted the county in
4 the previous map, they fractured the
5 African-American community for political
6 purposes.

7 And that political purpose was to
8 strengthen the Thirteenth District. When the
9 district in the northern end of Guilford County
10 was being drawn in the Republican map in 2011,
11 it was clear that that district was not going
12 to be a Democratic district.

13 So, in order to be cautious and draw a
14 plan that would pass muster under the Voting
15 Rights Act, it was decided to reunite the black
16 community in Guilford County into the Twelfth.

17 Q. Okay. Dr. Hofeller, would you put your
18 Exhibit 8 back in front of you, which is your
19 report?

20 (DISCUSSION OFF RECORD.)

21 A. Okay.

22 Q. (Mr. Speas) Dr. Hofeller, turn with me
23 to page 23 of your report, which is the last
24 page of your report. And my questions will be
25 about paragraphs 68, 69, 70 and 71, if you want

1 to take a minute to review that.

2 A. (Witness peruses document.)

3 Q. Have you had a chance to look at it?

4 A. I have.

5 Q. Dr. Hofeller, my question is this: with
6 respect to Congressional District 1, was
7 compliance with the Voting Rights Act or the
8 creation of safe and competitive districts more
9 important?

10 A. The primary factor governing the creation
11 of the entire plan, including the First
12 District, was to accomplish the political
13 policy goals of the General Assembly to
14 equalize the populations, to stabilize the
15 populations by going into the urban area, to
16 account for the population shifts within the
17 State and to ensure that Section 2 -- District
18 1 is a Section 2 district -- pardon me -- would
19 pass muster as a Section 2 district under the
20 Voting Rights Act and under Strickland.

21 Q. And in drawing Congressional 1, did the
22 law as set forth in the Voting Rights Act, as
23 you and Senator Rucho and Representative Lewis
24 predominate over your political goals?

25 MR. FARR: Objection to the form.

1 A. Well, I don't agree with the premise of
2 your question, but the -- the -- again, the
3 placement of where the First District was
4 located and accomplishing the political goals
5 were not necessarily in opposition to one
6 another, as were any of the other goals.

7 So, it was one factor out of many.

8 Q. (Mr. Speas) Okay.

9 MR. SPEAS: Can I take a few
10 minutes to look over my stuff?

11 MR. FARR: Sure.

12 (SHORT BREAK 10:55 - 11:04 A. M.)

13 Q. (Mr. Speas) I have one more set of
14 questions. Dr. Hofeller, would you put Exhibit
15 8 back in front of you, which is your report.
16 And I want to talk to you about paragraph 33 of
17 your report on page 10.

18 And I am particularly interested in the
19 sentence in paragraph 33 that says, quote, "My
20 experience in drafting and evaluating plans has
21 continued to enforce my expert opinion that the
22 best predictor of future election success is
23 past voting behavior, not registration."

24 Did I read that correctly?

25 A. Yes.

1 Q. And that is your opinion?

2 A. Yes.

3 Q. All right. And would it be accurate
4 then, Dr. Hofeller, that the best predictor of
5 the results of elections in Congressional
6 Districts 1 and 12 would have been the past
7 election results in those districts?

8 A. I'd say I'd have to agree with that, yes.

9 Q. Okay.

10 MR. SPEAS: Thank you very much.

11 A. Am I done?

12 MR. SPEAS: You're done. I'm sorry.

13 MR. FARR: I just have a couple of
14 questions -- very few; actually, maybe just one.

15 Cross-Examination by Mr. Farr:

16 Q. Dr. Hofeller, would you pull out Exhibit
17 10, which is the second report of the Professor.

18 MR. SPEAS: The second report?

19 MR. FARR: Yeah, of the Plaintiffs'
20 expert witness.

21 A. Okay.

22 Q. (Mr. Farr) Do you remember testifying
23 that you thought that in this second report,
24 the Plaintiffs' expert had relied to some
25 extent on election results? Do you remember

1 saying that today?

2 A. I did.

3 Q. Would you go through this and tell me if
4 you can point out where the expert relied on
5 election results?

6 A. I'd really have to -- it would be better
7 if I could be read back the context of what I
8 said.

9 Q. Well, I think you made a comment that
10 you thought in the second report that he had
11 relied upon election results to some extent. I
12 wanted to clarify what you meant by that. I
13 wanted you to -- well, let me be more specific.

14 A. Okay.

15 Q. In this second report, does Plaintiffs'
16 expert actually look at any actual election
17 results in an election?

18 A. I believe in Table 1 on page 18.

19 Q. Yeah.

20 A. He did the correlation between Obama's
21 share of the two-party vote and the racial
22 composition of VAP and registered voters in
23 VTDs. That classifies in my term election
24 results.

25 Q. Can you explain that a little more?

1 What is your understanding of what he did?

2 A. Well, he computed the black and white
3 voting age population for each VTD, or he took
4 out of the data -- one or the other, and he
5 took out the black and white voter
6 registration. Of course, it doesn't speak at
7 all about the independent, which is a great
8 deal of the vote.

9 And then ran a correlation of that, and
10 the racial composition of the -- of the VAP and
11 the two-party vote. So, he added the Obama
12 vote and the McCain vote, and found a total of
13 that and created percentages for the two-party
14 Obama vote and the two-party McCain vote.

15 And he ran the correlation analyses.

16 Q. Okay. Did you -- when you were drawing
17 these districts, did you rely on information
18 that would be similar to what is in Exhibit 10,
19 the Plaintiffs' expert's second report?

20 A. All of it?

21 Q. No, no, just what we just talked about.

22 A. Oh.

23 Q. The election results.

24 A. I'm sorry. Table 1? Of course not.

25 There are a lot of things that you would look

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1 at about a district after it's drawn, but the
2 redistricting system doesn't calculate on the
3 fly.

4 There's just -- you can't -- after you
5 move each little unit in the district, you
6 can't go through a full analysis of it. We'd
7 still be doing the plan today. So, the answer
8 is no.

9 MR. FARR: All right. That's all I
10 have.

11 MR. SPEAS: Thank you.

12 A. You're welcome. Nice seeing you again.

13 (WITNESS EXCUSED.)

14 (FURTHER DEPONENT SAITH NOT AT 11:10 A. M.)